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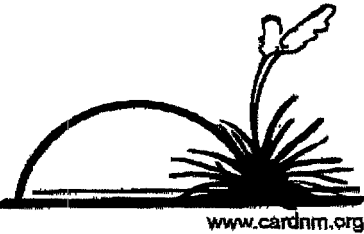
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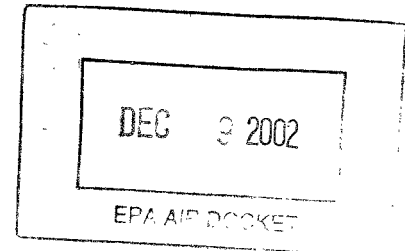
# CARD

Citizens For Alternatives To Radioactive Dumping



www.cardnm.org

December 9, 2002

**Docket ID No. OAR-2002-0005  
Comments**

Citizens for Alternatives to Radioactive Dumping (CARD) is submitting the following comments on EPA's Proposed Rule to change provisions of 40 CFR 194 as published in the *Federal Register* August 9, 2002: pp. 51930-51946. Please contact Deborah Reade, CARD's Research Director regarding these comments at 117 Duran Street, Santa Fe, NM 87501 (505) 986-9284, reade@nets.com.

CARD was created in response to the WIPP project. Its members and officers have been studying and commenting upon WIPP for over 20 years. Although CARD has one person who is employed full-time to work on WIPP and related issues, the vast majority of our members and officers, including the Research Director, are employed or involved in other activities and work on WIPP issues in addition to their other activities.

**PROPOSED CHANGES TO 40 CFR §194.6**

CARD is concerned that the definition of "minor alternative provision" is not clear enough. EPA or DOE may define something as minor that CARD or other citizens might consider a moderate or major change. This problem has already occurred several times in the State RCRA operating permit modification process. The State totally reversed itself on its interpretation of condition IV.B.2.b of the permit when WIPP opened. Currently the State is considering whether changing the panel closure configuration is simply a schedule change (which would be a Class I modification with no official public comment allowed) or a more substantive change to the panel closure system (which is CARD's interpretation and which would require a Class II process with public comment). Language should be included in the Final Rule that limits minor alternative provisions so that they cannot be interpreted to allow substantive changes to current regulations. CARD would also hope that language in the Final Rule would require that determinations of whether a change is substantive or non-substantive would be based on public comment as well as on Agency interpretation.

We object, however, to limiting the public comment period to 30 days. Sixty or 90 days would be more reasonable for the public. New Mexico is a state that is being inundated with radioactive and hazardous waste dumps, DOE projects, and nuclear and hazardous transportation. Virtually every

week there are hearings and other meetings to attend as well as comments, Findings of Fact or Complaints to file. It is literally impossible for someone who is not working full-time at this to inform oneself adequately on these very technical issues and provide useful comments on everything. CARD believes that this is a symptom of too many polluting projects being sited in our state. The WIPP project alone is **constantly** submitting modifications to their operating permit. We also have to review and comment on numerous aspects of Los Alamos National Laboratory, Sandia National Laboratory, government and private hazardous and mixed waste dumps, accompanying transportation as well as miscellaneous other projects.

Even if we were **only** studying and commenting on EPA's minor alternative provisions, however, we would still need more time. Documentation is technical and requires careful reading. It is often difficult and expensive to access documents since many members of the public do not have on-line access and would have to travel (sometimes long distances) to be able to read hard copy documents. Then, the documents cannot be taken home without paying rather high copying expenses. All this adds up to many roadblocks to public participation. Thirty days may seem like a long time to someone in a government agency who is working full-time on a project, but it is inadequate with these difficulties and especially when most members of the interested public are working full-time at other jobs.

#### **PROPOSED CHANGES TO 40 CFR §194.8**

CARD objects to the proposed change that would allow only one baseline inspection of the waste characterization program at a site which would approve all waste streams for the duration of the project. The Federal Register states that "[i]t may be necessary to conduct follow-up inspection activities..." (emphasis added). This statement is not reassuring since it could allow a site to characterize waste for 35 years with a total of only one inspection. Language in the Final Rule should include a schedule of required follow-up inspections if this baseline inspection program is approved. Inspections should be required at least every 2 years.

EPA seems to be concerned that the existing requirement for more numerous inspections of individual waste streams or groups of waste streams would overwhelm their resources. However, the public looks to EPA for true oversight of these potentially dangerous and polluting sites. We expect real, not token oversight. DOE already has a history of problems with characterization including emplacing waste at WIPP that was not characterized according to EPA's rules. DOE has not even reached much of the very old waste streams that may be more difficult to characterize adequately. Problems will also be exacerbated if Remote Handled waste is added in for characterization. There are too many unknowns involved with future and possibly older waste streams to allow blanket approval for a program and processes that are in place now. Does EPA believe that even a program that is adequate now will, in every case, continue to be adequate 20 or 30 years from now if there is little or no oversight?

If EPA personnel feel they do not currently have enough resources to do the number of inspections that would be needed under the current schedule, they should obtain a greater appropriation from Congress for this work (supported by DOE perhaps, whose schedule would be slowed down if EPA were not able to do inspections in a timely manner because of lack of money). The WIPP Land Withdrawal Act clearly shows that Congress intended to give EPA adequate funds to do their work. Alternatively, EPA should charge DOE for this work and support the inspections in that way. Ignoring necessary oversight because it is too expensive is not

the solution. If the inspections cannot be done, DOE shouldn't ship from a site until EPA is able to do an adequate number of inspections. Adequate does not mean only one baseline inspection at a site during the lifetime of the project with some indefinite possibility of follow-up at some unspecified later date

CARD has the same objections to blanket approval of all waste streams at a site for CCP.

CARD believes that the current schedule of inspections should not be changed for these above reasons. We like the idea of the public being able to comment on both the DOE documents and on EPA inspections (including baseline inspections if this is approved). However, we again object to the 30 day limit on public comment for the reasons described above. These documents are even more technical than those involved in minor alternative provisions and would require even more time to study.

### **IMPROVING PUBLIC NOTICE PROCESS FOR §194.8 INSPECTIONS**

CARD acknowledges that very few people or groups actually comment now on EPA inspections. CARD has never commented on the inspections for several reasons. First of all, as described above, we are already overwhelmed by the amount of research and comments we are already doing. Second, as members of the public we have not even seen the notices that announced these inspections. Obviously, few other people are seeing these notices either. Certainly, members of the public who are somewhat less involved in the process than CARD's Research Director would find it impossible to find out about and comment on these inspections even though they might feel it would be important to do so. Perhaps notice could be given, at least here in New Mexico and around the involved sites in other ways such as newspaper ads (not just legal notices), and radio announcements and EPA could seek to expand a list of interested people and groups who would be informed directly. Again, however, limiting comment periods to 30 days will certainly lessen the number of comments received; why bother even to start reading the materials if you already know you won't have time to write comments on them?

### **PROPOSED CHANGES TO 40 CFR §§194.12 AND 194.13**

CARD is concerned that EPA is moving to electronic formats too soon. Although digital formats and the internet can make access to and commenting on compliance applications and other documents much easier for some, many people, and certainly the general public, still have not fully made the change from print to digital media. Many members of CARD, for instance, are virtually computer illiterate. It has also been shown that minority members of the public are less likely to have access to computers than non-Hispanic whites. Therefore, it might even be discriminatory to put so much emphasis on electronic access while lowering the number of paper copies of materials at this time.

With 10 required copies of applications and reference materials there is at least more access to these documents even though even 10 might actually not be enough. CARD would hope that there would be copies available in at least Santa Fe and Albuquerque in New Mexico. (Most of the public attendees at the DOE's public information meetings required under the State permit modification process are in Santa Fe.) Has EPA received requests from other states or localities for hard copies of materials? Limiting the public's access to printed media to only four public dockets seems extremely restrictive and almost guaranteed to lessen public participation.

**PROPOSED CHANGES TO 40 CFR §194.24(c)(3)**

CARD has no objection to replacing the term "process knowledge" with the term "acceptable knowledge."

CARD also made oral comments during the Santa Fe public hearing. We thank you in advance for your consideration of all our comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Reade", followed by a long horizontal flourish.

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